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Attorneys for Defendants
THE GEO GROUP, INC., DIAZ, CAMPOS and
CITY OF ADELANTO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OMAR ARNOLDO RIVERA MARTINEZ; ISAAC ANTONIO LOPEZ CASTILLO; JOSUE VLADIMIR CORTEZ DIAZ; JOSUE MATEO LEMUS CAMPOS; MARVIN JOSUE GRANDE RODRIGUEZ; ALEXANDER ANTONIO BURGOS MEJIA; LUIS PEÑA GARCIA; JULIO CESAR BARAHONA CÓRNEJO, as individuals.

Plaintiffs,

V.

THE GEO GROUP, Inc., a Florida corporation; the CITY OF ADELANTO, a municipal entity; GEO LIEUTENANT DURAN, sued in her individual capacity; GEO LIEUTENANT DIAZ, sued in her individual capacity; GEO SERGEANT CAMPOS, sued in his individual capacity; SARAH JONES, sued in her individual capacity; THE UNITED STATES OF AMERICA; and DOES 1-10, individuals.

Defendants.

Case No. 5:18-cv-01125-SP

**DECLARATION OF JANE DIAZ IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Magistrate Judge:

Honorable Sheri Pym

1 I, JANE DIAZ, declare as follows:

2 1. I have personal knowledge of the matters set forth herein, except as to
 3 those matters stated on information and belief, and would competently testify
 4 thereto if called and sworn as a witness. This declaration is made in support of
 5 Defendants' motion for summary judgment or, in the alternative, summary
 6 adjudication.

7 2. From 1997 to 2008, I was employed by The GEO Group, Inc.
 8 ("GEO") at the Desert View Modified Community Correctional Facility ("Desert
 9 View Facility") where the highest rank that I held was captain. Thereafter, from
 10 2016 to April 2019, I was employed by GEO at the Adelanto Detention Facility
 11 ("Facility") where the last title that I held was lieutenant.

12 3. When I was hired by GEO in 1997, I was required to attend pre-
 13 service training. In or around 1998, after I completed an application and interview
 14 process, I was promoted from officer to lieutenant. Upon promotion, I was required
 15 to attend additional training that was specific to supervisors. Thereafter, in or
 16 around 2001, I was promoted to the position of training administrator before
 17 becoming a captain. As the training administrator, I ensured all GEO officers at the
 18 Desert View Facility completed their annual 40-hours of in-service training, among
 19 other things.

20 4. While employed at the Desert View Facility, I was never disciplined
 21 nor did I ever receive a complaint.

22 5. In 2016 when I returned to work with GEO as a lieutenant, I was
 23 required to complete a 40-hour orientation (i.e. pre-service training), which
 24 included training on GEO's use of force policy, hunger strike policy, and how to
 25 communicate with detainees. I also completed approximately three to four weeks of
 26 on-the-floor training with command staff (e.g., the captain, the chief, and other
 27 lieutenants).

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1 6. It is my understanding that per GEO's use of force policy, force can be
 2 used only as a last alternative after all other reasonable efforts to resolve a situation
 3 have failed. Staff is permitted to use only the amount of force necessary to gain
 4 control of the detainee, and staff must first attempt to gain a detainee's willing
 5 cooperation before using force. Additionally, it is my understanding that the use of
 6 force policy requires that staff first use presence without action. If staff is still
 7 unable to gain compliance, staff is then trained to use verbal commands and, if still
 8 unable to gain compliance, then soft techniques, (e.g. grasping, pressure to pressure
 9 points, chemical agents, "come-along" holds).

10 7. In addition to pre-service use of force training, in my capacity as a
 11 lieutenant, I had training that was specific to the use of chemical agents. The
 12 training consisted of watching a video that was approximately one hour and
 13 explained when it was appropriate to use chemical agents. It is my understanding
 14 that chemical agents can be used in very limited circumstances including when it is
 15 determined that a delay in bringing a situation (involving a detainee) under control
 16 would constitute a serious hazard to the detainee or others, or would result in a
 17 major disturbance or serious property damage. The training also included
 18 instruction on decontamination procedures to implement after a detainee makes
 19 contact with a chemical agent.

20 8. After the in class training, I was escorted outside and sprayed with a
 21 chemical agent directly in my face for a one-second burst. After being sprayed, I
 22 was required to immediately open my eyes and complete an obstacle course that
 23 required me to complete various tasks, including handcuffing an individual. Once I
 24 completed the course, which took me about 15 minutes, I was allowed to use a
 25 water fountain to wash the spray off my face. The training that I completed is the
 26 same training that any GEO employee would have to complete prior being
 27 permitted to carry and use chemical agents.

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1 9. On June 12, 2017, my shift was from 6:00 a.m. to 2:30 pm. Typically,
 2 I would conduct a shift briefing with the officers before the 6:00 a.m. shift starts,
 3 then return to the watch office to finish administrative work, and then walk the
 4 floor. I believe it was after my briefing that an officer gave me a piece of paper that
 5 had a list of names and informed me that a group of detainees in 2-Charlie (a dorm)
 6 threatened to go on a hunger strike. I was informed that they refused to comply with
 7 orders to go to their beds for purposes of “count.”

8 10. At the Facility, it is a GEO policy that at specified time throughout the
 9 day, all detainees must return to their bunks for “count.” The officer assigned to the
 10 dorm will announce that it is time for count by using words to the effect of “get
 11 back to your bunks,” “count time,” or “rack up” approximately ten (10) minutes
 12 before the count to allow detainees time to prepare for count (e.g. use the restroom).
 13 When the detainee returns to his/her bunk for count, this is commonly referred to as
 14 “racking up for count.” The detainees are well aware of the count procedures given
 15 it is a routine practice that occurs multiple times throughout each day.

16 11. The officer assigned to the dorm then counts the detainees at their
 17 beds. During this time, the entire dorm, including the day room (an area with tables
 18 for the detainees to sit at), is closed down/empty and the dorm should be very quiet.
 19 Once the officer that is assigned to the dorm completes the count, a second officer
 20 conducts a second count to confirm accuracy. Ultimately, the dorm officers report
 21 the total from their dorm to central control. Then, all of the dorm numbers are
 22 added together to determine the total number of detainees at the entire Facility. The
 23 detainees are required to stay at their bunks until the count is cleared for the entire
 24 Facility unless there is an emergency or specific reason that the detainee does not
 25 have to be by his/her bunk (e.g. if the detainee is in the medical unit or speaking to
 26 an ICE agent).

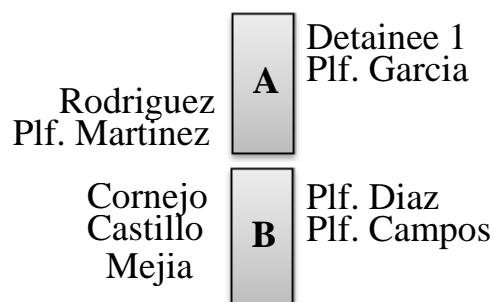
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1 12. The entire count process takes approximately 30 to 45 minutes. If
 2 count is not completed within an hour, it is my understanding that the Facility
 3 Administrator would be admonished by ICE and have to provide an explanation as
 4 to why the count was delayed. The count procedure is important because it is the
 5 mechanism by which the Facility is able to determine whether a detainee has
 6 escaped from the Facility.

7 13. The count procedures are identified in the detainee handbook under the
 8 section called “OFFICIAL COUNTS.” Additionally, the handbook states that a
 9 failure to stand for count and interference with count are violations of the rules and
 10 considered “high moderate offenses” that warrant discipline. Detainees are
 11 provided a copy of the handbook in the language that they speak when they arrive
 12 at the Facility. Attached to the Appendix of Exhibits as Exhibit “A” is a true and
 13 correct copy of the English version of the detainee handbook that is given to
 14 detainees.

15 14. Based on the information that was provided to me, at around 6:32 a.m.,
 16 I went to the dorm with several officers to evaluate the situation. When I arrived, I
 17 saw a group of nine detainees (eight of which were later identified as the plaintiffs
 18 in this matter) sitting at two tables in the day room. The following is a
 19 representation of the location of each plaintiff at the two tables.



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1 15. I tried to speak to Plaintiffs at the tables. However, they would not
 2 speak to me. At the time, I believed it was because they only spoke Spanish, but I
 3 later learned that they also spoke English.

4 16. Generally, when I cannot communicate with a detainee due to a
 5 language barrier, I will ask another officer, a detainee, or use the “hotline” for
 6 interpretation services. Here, I asked an officer (I believe it was Officer Reyes,
 7 Officer Martinez, or both) that spoke Spanish to speak to Plaintiffs. Based on
 8 information from the officer(s) that spoke Spanish, Plaintiffs were refusing to
 9 comply with orders and threatened to go on a hunger strike if their demands were
 10 not met. Based on information and belief, their demand related to the amount of
 11 their bond and they wanted to speak to an ICE agent. It was repeatedly explained to
 12 them that ICE agents were not present at the Facility at that hour, they should rack
 13 up for count, and that their demands could be addressed after count was completed.

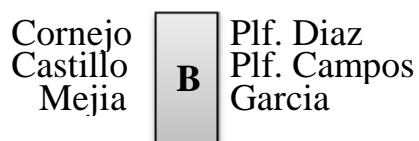
14 17. Aside from the information that was conveyed to Plaintiffs in Spanish,
 15 I also informed them in English that they needed to rack up for count and they
 16 would have to wait until after count to address their concerns with ICE. They
 17 responded by saying “no,” shaking their heads indicating their refusal, and
 18 continuing to sit at the two tables.

19 18. Based on the video recording of the incident, the officers were able to
 20 remove Plaintiffs Rodriguez and Martinez from Table A at around 6:38:01 a.m. The
 21 video demonstrates that the officers did not kick or strike Plaintiffs Rodriguez and
 22 Martinez despite both men resisting the officers. In fact, at around 6:38:55, while
 23 the officers tried to remove Plaintiff Martinez by walking between the two tables,
 24 Plaintiff Martinez grabbed on to Plaintiff Diaz, who was seated at Table B, so the
 25 officers could not escort him out. The officers were able to separate the two without
 26 using any strikes, kicks, or punches. By approximately 6:39:19, Plaintiffs
 27 Rodriguez and Martinez were out of the dorm.

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1 19. While the officers were trying to remove Plaintiffs Rodriguez and
 2 Martinez, at around 6:38:09, Plaintiffs Diaz, Campos, Cornejo, Castillo, and Mejia
 3 that were seated at Table B linked their arms in a form of active resistance.

4 20. Based on the video, I followed behind the officers and Plaintiff
 5 Martinez while they were exiting the dorm. During this time, at around 6:39:32,
 6 Plaintiff Garcia moved from Table A to Table B. The following is a representation
 7 of the location of the new seating arrangement:



11 21. Meanwhile, because of the disruption caused by Plaintiffs, the other
 12 detainees became riled up. They began to yell alongside Plaintiffs and were no
 13 longer standing by their bunks because they were observing the escalating situation.
 14 The dorm, during a period that is supposed to be very quiet, was in an uproar and
 15 completely out of control.

16 22. At around 6:41:56, only Plaintiffs Diaz, Campos, Cornejo, Castillo,
 17 Garcia and Mejia were all seated at Table B.

18 23. At this point, after being in the dorm for almost 10 minutes, it became
 19 clear that Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia were not
 20 going to comply with our verbal commands, they were actively resisting, and they
 21 were causing the other detainees to become, likewise, out of control. I assessed that
 22 I needed to regain control before things became worse and count was even further
 23 delayed. As a result, I informed them that if they did not comply, I would have to
 24 use a chemical agent – which I did not want to have to use. It is my understanding
 25 that in addition to me stating this in English, it was also communicated to them in
 26 Spanish.

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1 24. I determined that chemical agents were appropriate in this
 2 circumstance because I was unable to gain compliance of the remaining plaintiffs
 3 despite my use of presence, verbal commands, and soft techniques. Also, the
 4 continued delay in resolving the confrontation was now causing a major disturbance
 5 within the dorm and entire Facility.

6 25. Based on the video recording, at around 6:42:21, I sprayed a very short
 7 burst of a chemical agent down the center of Table B and intentionally did not
 8 directly spray Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia. My
 9 intention was to get their attention and end the confrontation. Importantly, in the
 10 video recording, Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia
 11 placed their heads down on the table before I sprayed which made me confident
 12 that, despite their refusal to speak English, they understood my intent to use a
 13 chemical agent and also knew what it was.

14 26. It is my understanding that the plaintiffs allege that I used a chemical
 15 agent more than once. However, in the instances where plaintiffs allege that I used
 16 the chemicals agents (e.g., at 6:38 am and 6:39 a.m.) there are officers in the
 17 immediate vicinity of where I allegedly sprayed. I would *never* spray if there is an
 18 officer in very close proximity of the target of my spray because I would not want
 19 an officer to be impacted by the spray. Instead, based on my training, I would
 20 advise that I am going to use my spray and instruct the officers to step away. In the
 21 one instance where I used a chemical agent (at around 6:42:21 a.m.), immediately
 22 before I sprayed, the video recording demonstrates the officers stepped back from
 23 Table B, which is consistent with my training to instruct officers to step back.

24 27. My use of a chemical agent – which was the only force that I used on
 25 this date – had no impact on Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and
 26 Mejia. They all remained seated and they did not even flinch in the slightest bit.
 27 Plaintiffs Diaz, Campos, Cornejo, Castillo, Garcia and Mejia then wrapped their
 28 legs around the legs of Table B. As a result, I used my radio and called for backup

1 because the situation required additional assistance. My call for assistance is
 2 broadcasted to all radios; thus, any officer or staff within the Facility with a radio is
 3 able to hear it and respond.

4 28. Based on the video recording, at around 6:43:47, two officers try to
 5 pull Garcia away from the table. At around 6:43:54, Plaintiff Campos grabbed on to
 6 Garcia and pushed the officers away from Garcia with his left hand/arm. As a result
 7 of Plaintiff Campos' conduct, a third officer tried to help remove Garcia. Plaintiffs
 8 Campos and Garcia were eventually separated, and Garcia was taken out of the
 9 dorm at around 6:44:15 despite his resistance.

10 29. Next, based on the video recording, at around 6:45:58, the officers
 11 tried to remove Plaintiff Mejia from the table. Plaintiff Mejia grabbed on to
 12 Plaintiff Castillo but the officers were able to separate the two without using any
 13 strikes, punches, or kicks. They were able to pull the two apart despite Plaintiff
 14 Mejia's active resistance.

15 30. At around the same time, in response to my call, Sgt. Campos arrived
 16 at around 6:46:18. In 2016, I met Sgt. Campos during my pre-service training; he
 17 assisted with one of the courses. I have never supervised Sgt. Campos and I did not
 18 work the same shift as him. Our interactions were limited to greetings made in
 19 passing. I did not specifically request his assistance nor did I have any way of
 20 knowing that he would be the person that would respond.

21 31. Immediately after Sgt. Campos arrived, he assisted the officers with
 22 Plaintiff Mejia, who was resisting to such a degree that the officers could not escort
 23 him out of the dorm. While Sgt. Campos assisted the officers with Plaintiff Mejia,
 24 based on the video, others officers continued to try to break up Plaintiffs Diaz,
 25 Campos, Cornejo, and Castillo by untangling their arms, but Plaintiffs Diaz,
 26 Campos, Cornejo, and Castillo resisted and refused to be removed from Table B.
 27 Eventually, the three officers were able to pull Castillo away from the table.

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1 32. When Sgt. Campos finished helping the officers with Plaintiff Mejia,
 2 Sgt. Campos sprayed towards the only remaining plaintiffs at Table B (Plaintiffs
 3 Diaz, Campos, and Cornejo) with a chemical agent twice. By 6:48:19, Plaintiffs had
 4 been taken out of the dorm and I had no further contact with them.

5 33. Based on information and belief, Plaintiffs were evaluated by medical
 6 after they were escorted out of the dorm room. Significantly, in watching the video,
 7 medical staff arrived to the dorm at around 6:34. I stood next to medical staff at
 8 around 6:37:06. In other words, I knew medical staff was present during the
 9 situation and, based on information and belief, medical staff would treat Plaintiffs if
 10 necessary.

11 34. Also, since Plaintiffs Garcia, Diaz, Campos, Cornejo, and Mejia made
 12 contact with chemical agents, they needed to be decontaminated and eventually
 13 taken to medical. Importantly, the medical unit only has two cells and, here, there
 14 were six plaintiffs that needed to be seen. In situations where the medical unit does
 15 not have capacity, officers are trained to take detainees to intake and placed in
 16 holding cells or the triage area until the medical unit has the capacity to see them.

17 35. Based on information and belief, Plaintiffs Garcia, Diaz, Campos,
 18 Cornejo, and Mejia were placed under showers and rinsed off for purposes of
 19 decontamination.

20 36. I remained in the dorm room for a period of time and then went to the
 21 watch office to prepare the use of force report as required by GEO's use of force
 22 policy. Captain McCusker, my supervisor, assisted me in the preparation of the use
 23 of force report, which included written statements from the involved officers.
 24 Attached to the Appendix of Exhibits as Exhibit "B" is a true and correct copy of
 25 the use of force report that I prepared with Captain McCusker's assistance,
 26 including the written statements that were provided by the involved officers.

27 37. As indicated on the use of force report, Plaintiffs were cited for
 28 violating rule 213, which prohibits detainees from engaging in or inciting a group

1 demonstration in the dorm. Here, as described above, Plaintiffs refused to comply
 2 with orders to rack up, engaged in active resistance, and caused the entire dorm to
 3 become riled up. The rules that detainees are required to follow are cited in the
 4 detained handbook under “Disciplinary Segregation – Category II Offenses.”
 5 Category II Offenses are considered “high offenses.”

6 38. Once a detainee is found to be in violation of a rule at the Facility, they
 7 are placed in administrative segregation pending an investigation and hearing on the
 8 matter. Here, I prepared the Administrative Segregation Order (“Order”) for each
 9 Plaintiff. The Order was placed in their respective files while they were in
 10 Administrative Segregation. Generally, the detainees will sign the Order when they
 11 are in the process of being moved to Administrative Segregation or once they are
 12 placed. Attached to the Appendix of Exhibits as Exhibit “C” is a true and correct
 13 copy of the Order that was completed for each detainee.

14 39. When a detainee is placed in Administrative Segregation, a supervisor
 15 completes an investigation and determines whether the detainee in fact violated the
 16 stated rule. The detainee’s file, which includes the Order, is intended to assist the
 17 investigating officer.

18 40. In addition to the completing the use of force report and Order, I also
 19 completed the Incident of Prohibited Acts and Notice of Charges (“Notice”) for
 20 each plaintiff and gave Captain McCusker the completed Notices. Attached to the
 21 Appendix of Exhibits as Exhibit “D” is a true and correct copy of the Notice that
 22 was completed for each plaintiff.

23 41. It is my understanding that Plaintiffs have alleged they were physically
 24 injured as a result of the chemical agent. Given that I have been directly sprayed in
 25 my face, I know that immediately after being sprayed, there is a tingling sensation.
 26 Afterwards, the tingling sensation only returned when I showered at home because
 27 water, whether it is hot or cold, may activate the spray. The impact of the spray
 28 lasted until the day after I had been sprayed. I never applied any creams or

1 ointments to my face as a result of the spray; I simply used water decontaminate my
 2 face.

3 42. It is important that the rules of the Facility, including count
 4 procedures, are enforced consistently. If they are not, it can cause detainees to be
 5 confused as to whether they need to comply with the rules in the future.
 6 Additionally, when a detainee strikes staff, it is a serious rule violation and the
 7 detainee is typically taken to Administrative Segregation pending disciplinary
 8 proceedings. Alternatively, a detainee can also be arrested by the San Bernardino
 9 Sheriff's Department for striking an officer.

10 43. While employed with GEO, I did not have any responsibilities related
 11 to the handling of grievances filed by detainees. There were *very* limited occasions
 12 when the Grievance Coordinator would advise me of a grievance related to a GEO
 13 officer for purposes of notifying me that she needed to speak to the detainee that
 14 filed the grievance. To the extent that Plaintiffs filed grievances or made complaints
 15 of any kind, I have no knowledge of said grievances or complaints.

16 44. It is my understanding that Plaintiffs alleged that they complained that
 17 the food at Adelanto Detention Facility was not good; however, GEO staff,
 18 including myself, would eat the same food as detainees. I did not find the food
 19 problematic.

20 45. It is my understanding that Plaintiffs alleged that they complained
 21 about the medical care at the Facility. If I ever heard a detainee complain about
 22 access to medical care, I would take whatever steps that I could to ensure they
 23 received adequate treatment, such as contacting medical staff and requesting that
 24 they see the detainee that made the complaint.

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1 46. Moreover, while employed with GEO, I did not have the ability to
2 determine whether detainees would have restrictions placed on their access to the
3 phones. Based on information and belief, only the Facility Administrator and/or
4 ICE have the ability to make that determination. I have no knowledge of any
5 incidents at the Facility where detainees were prevented from making calls to
6 certain numbers. To the extent that Plaintiffs had restrictions placed on their access
7 to the phones, I have no knowledge of said restriction(s) nor did I take any actions
8 to cause said restriction.

9 47. On June 12, 2017, I never physically touched any of the Plaintiffs, and
10 the only force that I used was a very short burst of a chemical agent that is captured
11 on video. After Plaintiffs failed to comply with presence and verbal commands,
12 incited the entire dorm, and delayed count procedures, I did, however, direct the
13 GEO officers to try to remove Plaintiffs from the tables to end the disturbance that
14 was causing a major disruption throughout the entire Facility. I observed the GEO
15 officers use only the amount of force that was reasonably necessary to gain
16 compliance of Plaintiffs, which consisted of pulling them away from the tables. The
17 involved GEO officers never used strikes, kicks, or punches on or against Plaintiffs.
18 Had I witnessed a GEO officer use that level of force, I would have immediately
19 stopped him/her.

20 I declare under penalty of perjury under the laws of California and the United
21 States of America that the foregoing is true and correct.

22 Executed on Nov 4, 2019, 2019, at 1823, California.

Jane R Diaz
JANE DIAZ